



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: March 11, 2011

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 19 [Drug Involved Offenses]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 19 which is consensus legislation crafted by the Drug Law Revisions Committee that overhauls Delaware's criminal drug offense laws. The Committee included representatives from the Attorney General's Office, Public Defender, law enforcement, and Stand Up for What's Right and Just ("SURJ"). SCPD has supported similar initiatives in the past. Excellent summaries relating to the proposed legislation are contained in the attached January 20, 24, and 27, 2011 News Journal articles.

SCPD strongly endorses H.B. 19 since it bill would revise drug offense penalties, eliminate some minimum-mandatory sentences, and effect other "common-sense" changes. Some of the salutary changes include repeal of the law (Title 16 Del. C. §4758; lines 491-492) making it a crime to not keep a prescription drug in its original container. SCPD has previously criticized the statute which makes the elderly and persons with disabilities guilty of a Class A Misdemeanor for simply using daily-dose weekly pill containers. A second common-sense change is to reduce the length of a driver license suspension from 2-3 years to 6 months for drug convictions. According to Section 70 of the synopsis, Delaware's law is the harshest in the Nation and the lack of a license undermines attempts to obtain and retain employment.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Jack A. Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council



Minimum sentencing laws sap Delaware's financial resources

delaware voice • VICTOR F. BATTAGLIA SR. and
BERNARD ABELMAN • January 20, 2011

The announcement of the recent layoff of Wilmington police officers and a cutback on fire protection service is only a small part of the financial crisis with which Mayor Baker and the Wilmington City Council have to contend.

The fiscal crisis with which Wilmington has to struggle is repeated in larger terms for both the state of Delaware and New Castle County.

All over our country, and notably in Texas, New York and Michigan reports support the successful efforts to reduce prison population. The effort has saved hundreds of millions of dollars while at the same time reducing the crime rate. Most of these efforts have been related to the abolition of the mandatory minimum sentence.

Delaware historically has resisted change in how we incarcerate people and how we treat people who are charged with a crime. We cringe when we read or hear news reports of a woman being whipped in a foreign country for violation of its penal code.

The fact that we cringe over such reports indicates that we have a short memory. A Delaware man was actually whipped as late as 1952. In fact, 1952 was the last time it was used in the United States.

The Delaware whipping post was part of Delaware law until it was repealed in 1972. Delaware is believed to be among the last of the states to prohibit its use.

There was a time when the cost of incarceration did not approach today's expensive level.

How many times has The News Journal reported plans for construction of additional prison space, the cost of providing competent medical care for prisoners, disastrous effect of overcrowding, the brutal rape of a prison employee, the supervision imposed by the federal court on the quality of medical care for prisoners?

We have a tendency to not remember but when we incarcerate people, we literally become trustees for their welfare. We have to ensure that they are housed, fed, provided quality medical care and protection in a humane way. If projections are correct, the cost of operating Delaware's Correction System in 2011 will be about \$250 million.

Our thirst for incarceration has us to the point where money desperately needed to keep police on the street, the firefighters on the trucks, to provide basic medical care for the poor (who are not guilty of anything more than being poor) is not available. These funds have been commandeered to satisfy our thirst for incarceration.

Good and decent legislators are attempting to alert us when they say "we are going to have to look at Medicaid." We know that means Medicaid assistance is going to be cut. Money has to come from somewhere to pay the \$44 million needed for medical care for the prison population.

Perhaps money for public safety and for medical assistance for the poor would be available, if the state would adjust the penal code to allow Delaware judges to decide who should be confined to prison.

The evidence from other jurisdictions is that when that discretion is available at sentencing, the prison population is reduced.

Public Safety requires some violators of the law to be incarcerated to protect us from demonstrated violent and dangerous tendencies. Unfortunately, because of our tendency not to make changes in the

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law, prisons are overloaded with a mixture of violent, as well as low risk prisoners.

Our reluctance to change has left us with a whole raft of laws that require mandatory minimum periods of incarceration. Laws that ignore the quality of risk a potential prisoner may demonstrate to keep our prisons filled to capacity.

The time has come to abolish all mandatory sentencing laws. With the appropriate guidelines Delaware judges, judges from our families, our neighborhoods and our communities have demonstrated both the ability and competence to incarcerate those who are a risk to our safety and to sentence those who do not pose a risk to everything from house arrest, probation with restitution, education and employment, supporting a family and averting contact with undesirable people.

We need now a study of the financial impact of incarcerating low-risk prisoners.

We need now to have money saved by reducing the prison population to support public safety, to pay decent salaries to our police and firemen, to provide decent salaries to our prison personnel and to provide quality training for all of our public safety personnel and yes, we need to provide quality medical care for the poor and the underprivileged.

The day will come when mandatory sentences will be an unhappy memory. Please don't let it be delayed as long as it took us to abolish the pillary and the whipping post.

Victor F. Battaglia Sr. and S. Bernard Abelman are lawyers in Wilmington.

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Drug bill revises prison penalties

Rewrite of state laws drops some mandatory sentences

By J.L. MILLER • The News Journal • January 24, 2011

DOVER — A total rewrite of Delaware's drug laws that would lighten some penalties, stiffen others and eliminate some minimum-mandatory sentences is back for a second go-round in the General Assembly.

House Bill 19, introduced in the new session by Rep. Melanie George, D-Bear, would repeal major portions of state drug laws and replace them with three main crimes:

- Drug dealing — delivery, manufacture or possession with intent to deliver or manufacture.

- Aggravated possession — possession of amounts that indicate drug dealing.

- Possession — simple possession of a controlled substance.

The three crimes would have multiple levels of severity, depending on the number of aggravating factors.

Those factors could include resisting arrest, involving a child in the crime or possessing a certain threshold weight of drugs.

There would be five drug-weight tiers, with the lowest weights carrying the least severe penalties.

The bill also would create a new felony: possession of a handgun, a semiautomatic or an automatic weapon while in possession of drugs. Automatic weapons — submachine and machine guns — already are illegal in Delaware.

The legislation was hammered out by a committee that included representatives of law enforcement, the Attorney General's Office, the Public Defender's Office and Stand Up for What's Right and Just, a reform group that has pushed similar legislation for

years.

"This is a comprehensive rewrite of our drug laws. It represents the consensus of all the affected parties," said George, who sponsored an essentially identical bill last year. That bill made it through the House late last session but languished in the Senate Executive Committee.

This year's bill, though, has Senate President Pro Tem Anthony Deluca and Senate Majority Leader Patricia Blevins as co-sponsors — a strong indication that its future may be brighter.

This year's bill also has a name. It's called the Ned Carpenter Act, after the late Edmund "Ned" Carpenter II.

Carpenter, a prominent lawyer who died in 2008, lobbied tirelessly for the repeal of minimum-mandatory drug sentences. He argued that they essentially transfer sentencing power to prosecutors, who decide whether to pursue a mandatory sentence.

"Mr. Carpenter was a huge champion of this issue," said SURJ Executive Director Joanna Champney. "Up until a week or two before his passing he was doing radio commercials for SURJ promoting the previous version of this bill."

According to Champney, House Bill 19 would prevent prosecutors from filing multiple minimum-mandatory charges against a defendant to use as leverage for a plea bargain.

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Repealing some minimum-mandatory sentences "allows judges to better customize a sentence to an offender, even though it's not complete carte blanche," Champney said.

The bill also would reduce the driver's license suspension period that goes along with drug convictions.

People convicted of drug felonies lose their licenses for three years; misdemeanor drug offenses net a one-year suspension. George's bill would change both to six months.

Champney said this would make it easier for people on probation or those being released from prison to find employment, make their probation appointments and go about putting their lives back together.

Atkins opposed

Although last year's bill passed the House on a lopsided 31-5 vote, it was not without its critics. Rep. John Atkins, D-Millsboro, is one.

"I just think anytime in my district, if we go loosening drug laws, it's going to be a tough sell," Atkins said. "We've got small towns with minimal or small police departments that are just being plagued in this economy by the petty sales of marijuana and OxyContin and other drugs."

Atkins said minimum mandatory sentences accomplish what lawmakers intended: to put drug dealers behind bars.

"When they're locked up in [Sussex Correctional Institution] they're not selling drugs in front of Long Neck Elementary," Atkins said.

House Bill 19 would have a strong selling point if its backers could show it would save the state money by reducing the number of people in prison.

It costs about \$30,000 a year to house an inmate, and prison costs consume 7.7 cents of every dollar the state spends — more than is spent on higher education.

But previous sentencing reforms have had mixed results when it comes to prison populations.

In 2003, Delaware eased some of the most severe minimum mandatory sentences but increased

penalties for serious crimes such as robbery and assault. At the time, officials predicted one change would offset the other and there would be no net change in prison populations. Prison populations dipped for two years, but then rose in 2006 and 2007.

In 2007 there were 3,020 cases in Superior Court that involved at least one drug charge at conviction, according to a 2009 report by the state Statistical Analysis Center.


Of the 3,020 drug cases, 7.2 percent — 218 — involved at least one charge resulting in a minimum mandatory drug term. More recent figures were unavailable Friday.

As of Friday, there were 5,385 inmates in Delaware's correctional facilities.

The House Judiciary Committee, which George chairs, will consider the bill at 12:30 p.m. Wednesday in the House Majority Hearing Room in Legislative Hall.

Contact J.L. Miller at 678-4271 or jlmiller@delawareonline.com.

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Rep. Melanie George's bill looks to have a good chance of being passed.

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January 27, 2011

Delaware drug law legislation clears House panel

By J.L. MILLER
The News Journal

DOVER -- Legislation that would rewrite Delaware's drug laws, do away with some minimum-mandatory sentences, but stiffen other penalties, passed a key hurdle Wednesday.

The House Judiciary Committee voted unanimously to release House Bill 19 for action by the full House. Its sponsor, Rep. Melanie George, said she will seek to have the House act on the bill today -- the last session day before the six-week Joint Finance Committee break.

George, D-Bear, said she believes there are sufficient House votes to pass the bill -- but a vote today could hinge on road conditions. House Speaker Robert F. Gilligan said he planned on speaking with other officials around 5 a.m. this morning to determine whether he will cancel the session.

George's bill would repeal what Deputy Attorney General Richard Andrews, who helped craft the bill, called a "patchwork" of drug laws that have been enacted over the years.

"The current law does have some fairly draconian sentences," said Andrews, who is in charge of criminal prosecutions in the state. Andrews called the current system "a rather blunt instrument for society to decide who should go to prison for how long."

The bill would replace the current statutes with three main crimes: drug dealing, aggravated possession and possession.

The three crimes would have multiple levels of severity, depending on aggravating factors such as resisting arrest or possessing a certain threshold weight of drugs. There would be five drug-weight tiers, with the lowest weights carrying the least severe penalties.

Simple possession of small amounts for personal use would be a misdemeanor.

Although the bill would undo some minimum-mandatory sentences, some offenses would carry a two-year minimum but a ceiling of 25 years. That would give judges the flexibility to fashion sentences that fit the crime and the individual.

"It treats users and dealers differently," said Public Defender Brendan O'Neill.

"It's appropriate that dealers should be treated more harshly than users, and the bill accomplishes that," he said.

The bill also would ease driver's license suspensions for drug offenses from two years to six months, the minimum required to qualify for federal highway funds. Suspensions make it difficult for probationers to hold down jobs.

Passage of the legislation would cap a long effort to get rid of minimum-mandatory sentences, which tie judges' hands and give great discretion to prosecutors. Over the years the effort morphed into HB 19, which was the product of two years' work by a committee that included law enforcement, the Attorney General's Office, the Public Defender's Office and Stand Up for What's Right and Just, a reform group.

An indication of the bill's prospects came during Wednesday's committee hearing, when Rep. John L. "Larry" Mitchell, D-Elsmere and a retired police officer, voted for it.

Mitchell, who serves as chief of public safety for Delaware Technical & Community College, opposed last year's version. He supports this bill.

Not only is law enforcement on board, but so is the Senate leadership. Senate President Pro Tem Anthony DeLuca and Majority Leader Patricia Blevins are co-sponsors.
